



- (2) Whether claimant is entitled to additional temporary total disability compensation as a result of a miscalculation of the average weekly wage.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein, the Appeals Board makes the following findings of fact and conclusions of law:

The Appeals Board finds that the Award of the Administrative Law Judge sets out findings of fact and conclusions of law in some detail and it is not necessary to repeat those herein. The findings and conclusions enumerated in the Award of the Administrative Law Judge are accurate and appropriate and the Appeals Board adopts same as its own findings and conclusions, as if specifically set forth herein.

Claimant alleges the Administrative Law Judge's calculation of average weekly wage in the amount of \$143.03 is inaccurate and claimant instead had an average weekly wage of \$162. This computation hinges upon whether claimant is considered a full-time employee or a part-time employee pursuant to K.S.A. 44-511(a)(4) which states in part:

The term "part-time hourly employee" shall mean and include any employee paid on an hourly basis: (A) Who by custom and practice or under the verbal or written employment contract in force at the time of the accident is employed to work, agrees to work, or is expected to work on a regular basis less than 40 hours per week; and (B) who at the time of the accident is working in any type of trade or employment where there is no customary number of hours constituting an ordinary day in the character of the work involved or performed by the employee.

In this instance, claimant acknowledges she was hired to work on a regular basis less than 40 hours per week. Further, there is no evidence in the record to indicate that at the time of the accident claimant's trade or employment had a customary number of hours constituting an ordinary day. Claimant acknowledged working less than 8 hours per day on a regular basis and further acknowledged other persons would regularly be expected to work other than 30 hours per week. The wage statement attached to the Regular Hearing transcript and marked as Claimant's Exhibit 2 reflects that claimant only worked 30 or more hours on 12 of the 26 weeks preceding the accident. During the other 14 weeks preceding the accident, claimant worked less than 30 hours per week. As such, the Appeals Board finds that claimant was a part-time employee and the computation of the claimant's average weekly wage is controlled by K.S.A. 44-511(b)(5) which states in part:

. . . the average gross weekly wage shall be the gross amount of money earned during the number of calendar weeks so employed, up to a maximum

of 26 calendar weeks immediately preceding the date of the accident, divided by the number of weeks employed, or by 26 as the case may be, plus the average weekly value of any additional compensation and the value of the employee's average weekly overtime computed as provided in paragraph (4) of this subsection.

In this instance, the claimant's total gross earnings were properly computed by the Administrative Law Judge based upon claimant's Exhibit 2 from the Regular Hearing. The Appeals Board finds the average weekly wage and the temporary total disability compensation as awarded by the Administrative Law Judge are appropriate and said award should be affirmed.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge John D. Clark dated July 28, 1997, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of December 1997.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Roger A. Riedmiller, Wichita, KS  
David M. Druten, Kansas City, KS  
John D. Clark, Administrative Law Judge  
Philip S. Harness, Director